(2013) 11 AP CK 0016

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 26 of 2011

T. Rani and Begari Raju — APPELLANT

Vs

Sultan Mohd. Shafiuddin and New India Assurance Company Ltd. — RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 AP CK 0016

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : Rameswari Masineni, for the Appellant; Kalpana Ekbote, for the Respondent

Final Decision : Partly Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—The Claimants, parents of the deceased by name Thogari Anil Kumar, filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Medak, at Sangreddy (for short, ''Tribunal'') in M.V.O.P. No. 263 of 2009 dated 13.09.2010, awarding compensation of Rs. 2,62,000/- (Rupees two lakh sixty two thousand only) as against the claim of Rs. 4,00,000/- (Rupees four lakh only), against respondent Nos. 1 and 2 viz., the owner and insurer of the crime vehicle (lorry)for enhancement of compensation as prayed for in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, ''the Act''). Heard M/s. Rameswari Masineni, the learned counsel for the appellants and Mrs. Kalpana Ekboti, the learned standing counsel the 2nd respondent-New India Assurance Company Limited and the 1st respondent who was served with notice is called absent with no representation and thus taken as heard the 1st respondent for the absence to decide on merits and perused the record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

2. The contentions in the grounds of appeal in nutshell are that the award of the

Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal erred in arriving a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of awarding as claimed and prayed for from nature of avocation of the deceased and earnings there from and from the age and multiplier that is applicable and also for the loss of consortium, loss of estate, loss of love, affection, care and protection etc., and hence to allow the appeal by enhancing and awarding full compensation as prayed for.

3. Now the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?

2. To what result?

POINT-1:

4. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that, on 10.06.2009 due to the rash and negligent driving of the driver of the crime vehicle (lorry bearing No. MH-25B-9347) that belongs to the 1st respondent insured with the 2nd respondent covered by Ex. B.3 policy, dashed to the auto bearing No. AP 23 U 3235 being driven by the deceased, as a result the deceased sustained severe injuries in the occurrence and breathed last while shifting to hospital. It is also not in dispute that the deceased, aged about 21 years- (as per Ex. A.4 Postmortem report) and driver by avocation, which occurrence is covered by Ex. A.1 First Information Report in Cr. No. 171 of 2009 u/s 304A IPC and also proved from Ex. A. 5 M.V. report and evidence of P.W.1 with reference to it and of the eye witness P.W.2. The Tribunal from said evidence on record came to conclusion of there is insurance coverage under Ex. B.1 policy and the 2nd respondent-Insurance Company is liable to indemnify the 1st respondent-owner of the vehicle to compensate the claimants and therefrom taken the earnings of deceased at Rs. 3,000/- p.m. and half of it of Rs. 1500/- is taken as loss of monthly income which comes to Rs. 18,000/- but for the reason that the deceased was unmarried person, the age of mother of the deceased-1st petitioner of 40 years was taken and applied multiplier 14 which comes to Rs. 2,52,000/-, apart from that Rs. 5,000/- to each petitioner for loss of love and affection in total awarded compensation of Rs. 2,62,000/- against respondent Nos. 1 and 2 jointly and severally, to be entitled by petitioner Nos. 1 and 2.

5. It is the contention of the learned counsel for the claimants in support of the grounds of the appeal that though the Tribunal not taken the earnings of deceased claimed at Rs. 9000/- per month, has taken a very low amount of earnings of Rs. 3000/- per month which even for a domestic housewife can be taken or an agricultural cooli can get to consider as the minimum earning capacity of every major human being and the multiplier adopted of 14 is not correct, hence to award the compensation as prayed for which is a just

compensation by applying the multiplier 15 and by taking consideration of the earnings at a minimum of Rs. 5,000/- p.m. with 50% increase therefrom of future earnings.

6. Before coming to decide, what is just compensation in the factual matrix of the case, It is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In Ward v. James 1965 (1) All.E.R. 563, it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of. damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn L.J. in Charle red House Credit v. Tolly 1963(2) All.E.R 432 remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in Parry v. Cleaver 1969 (1) All.E.R 555 observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court i R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, at paragraph No. 12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required. The appeal claim herein is thus confined to the quantum from the contention of not correctly taken the multiplicand and multiplier with future prospects in earnings and on the quantum of consortium and funeral expenses etc., in arriving a sum for awarding just compensation.

7. In this regard, it is well laid down by the Apex Court (Three Judges Bench) in the latest expression in Rajesh and Others Vs. Rajbir Singh and Others, . at paragraph Nos. 1 and 7 referring to the earlier expressions in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Nagappa Vs. Gurudayal Singh and Others, that compensation which appears to it to be just, has to be assessed and awarded by the Tribunal set up u/s 166 of the Act. The expression ''just compensation'' has been explained in Sarla Verma''s case (supra) holding that the compensation awarded by the Tribunal does not become just compensation merely because the Tribunal considered it to be just. ''Just compensation'' is an adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation.

8. From the above legal principles and in the factual matrix of case, the deceased was driver of the auto but there is no proof much less any driving licence filed in support of the fact that he is a driver. There is no reference even among Ex. A.1 First Information Report or Ex. A.4 Post mortem report that the deceased was a driver of any vehicle involved in the accident. When there is no proof, the Tribunal has rightly held that the deceased was a driver is not proved. As contended by the counsel for the 2nd respondent-Insurer that what was the income of the deceased estimated by the Tribunal of Rs. 3,000/- p.m. is quite reasonable, though the claim is Rs. 9,000/- p.m. and there is nothing to interfere with said finding of the Tribunal by this Court white sitting in appeal. Even coming to the multiplier adopted by the Tribunal of 14 though for a person aged between 36 to 40 is 15 as laid down in Sarla Verma (supra) by the Apex Court which is even followed in the latest expression in Rajesh (supra), the three judge Bench, from the fact that the Tribunal arrived to the conclusion for no proof regarding the age of the 1st claimant-mother of the deceased of 40, as it is to take between 41 to 45, but the multiplier adopted 14 is also requires no interference. However, the fact remains that as laid down in Rajesh (Supra), the future prospective earning capacity is not confined to any salaried employee but also fixed age workers or even private employees or artisans and for a person who aged up to 40, the prospective increase is 50%, between 40 to 50 is 30% and above 50 it is 15%. Though in this Case, the deceased is a bachelor and the age of mother is criteria even adopted said ratio by taking the age ranging of 40 to 50 is 30% increase therefrom comes to Rs. 3900/- per month, x 12 = Rs. 46,800/- p.a. if half of the amount deducted for personal expenses of the deceased since a bachelor and the dependants are the parents it comes to Rs. 23,400/- and multiplier 14 if applied multiplicand comes to Rs. 3,27,600/-, funeral expenses minimum of Rs. 25,000/- payable as laid down in Rajesh (supra) and loss of estate of Rs. 10,000/- as laid down by the Apex Court in Rajesh (supra) at paragraph No. 11 referring to the earlier expression in Sarla Verma (supra) it comes to Rs. 3,62,600/- thereby the compensation awarded by the Tribunal of Rs. 2,62,000/- is utterly low as rightly contended by the claimants.

9. Having regard to the above, the just compensation which the claimants are entitled comes to Rs. 3,63,000/- to so award. The interest at 8% per annum awarded by the Tribunal even in dispute, from the settled proposition of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, Sarla Verma''s case (supra) and from the latest expression of the Apex Court in Rajesh''s case (cited supra), interest is awarded at 7 1/2% per annum by modifying and reducing from 8% per annum awarded by the Tribunal. Accordingly, Point-1 for consideration is answered.

POINT -2:

Accordingly and in the result, the appeal is partly allowed by modifying the Award of the Tribunal on quantum of compensation by enhancing the same from Rs. 2,62,600/- to Rs. 3,63,000/- (Rupees three lakh sixty three thousand only) with interest at 7 1/2% per annum from date of the claim petition till realization/ deposit with notice. Respondent Nos. 1 and 2, who are jointly and severally liable to pay the compensation, are directed to deposit within one month said amount with interest from the date of petition (after deduction of any amount paid so far pursuant to the award of the Tribunal), failing which the claimants can execute and recover. On such deposit or execution and recovery, Out of said amount, both the claimants are each entitled to withdraw Rs. 1,00,000/- and rest of the amount of the Claimants equally be invested respectively in separate Fixed Deposits in a nationalized bank. The claimants are at liberty to move the Tribunal for further withdrawal if any. There is no order as to costs in the appeal.